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December 19, 2005

VIA HAND DELIVERY
Mr. Charles L. A. Terreni
Chief Clerk and Administrator
Public Service Commission of SC
100 Executive Center, Suite 100
Columbia, South Carolina 29210

Re: *Generic Proceeding To Explore a Formal Request for Proposal For Utilities That Are Considering Alternatives For Adding Generating Capacity*
Docket No.: 2005-191-E
HSB File No.: 04381.226

Dear Mr. Terreni:

Enclosed for filing is an original and six (6) copies of the **SCE&G'S POST-HEARING BRIEF IN THE FORM OF A PROPOSED ORDER**, in the above-referenced matter.

We are also serving copies of this document electronically on all parties.

Please be kind enough to return a clocked copy of the document via the bearer of this letter.

Thank you for your consideration of this matter.

Sincerely,

Belton T. Zeigler

BTZ/mam
enclosures

cc: Darra W. Cothran, Esquire
Frank R. Ellerbe, III, Esquire
Len S. Anthony, Esquire
Kendal Bowman, Esquire
Richard L. Whitt, Esquire
Scott A. Elliott, Esquire
Shannon B. Hudson, Esquire

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2005-191-E

IN RE:

Generic Proceeding to Explore	)	**CERTIFICATE OF SERVICE**
A Formal Request for Proposal	)	
For Utilities that are Considering	)	
Alternatives for Adding	)	
Generating Capacity	)	

I hereby certify that on December 19, 2005, a copy of **SCE&G'S POST-HEARING BRIEF IN THE FORM OF A PROPOSED ORDER** was served on the parties listed below by sending a copy via electronic mail and U S. mail at the addresses below:

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Columbia, South Carolina

December 19, 2005.

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2005-191-E

ORDER NO. _____

December 19, 2005

IN RE: Generic Proceeding To Explore a Formal Request for Proposal For Utilities That Are Considering Alternatives For Adding Generating Capacity	))))))	PROPOSED ORDER OF SOUTH CAROLINA ELECTRIC & GAS COMPANY

I.

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the "Commission") pursuant to Order Number 2005-2 (the "Order") which was issued on January 6, 2005 in Docket Number 2004-178-E, Application for Adjustments in South Carolina Electric & Gas Company's Electric Rate Schedules and Tariffs. In that Order, the Commission directed that a generic docket be opened to explore whether or not to impose a formal Request for Proposal ("RFP") process for utilities that are considering alternatives for adding generating capacity. The Commission did so in response to a request by the independent power producer, Columbia Energy, LLC, that such an RFP process be mandated. Because the request was of general relevance to all electric

suppliers in South Carolina, the Commission opened this present generic docket to "gather an array of options and opinions about the optimal way to implement a competitive bid process." Order No. 2005-2 at 52. As indicated in the Order denying reconsideration in Docket No. 2004-178-E, this proceeding is not itself a rule-making, but is a generic fact-finding docket to determine if such a ruling-making proceeding is warranted. Order No. 2005-149 at p. 3-4.

In response to the opening of the docket in this matter, petitions to intervene were filed by Carolina Power and Light d/b/a Progress Energy Carolinas, Incorporated ("Progress"), Duke Power a division of Duke Energy Corporation ("Duke"), LS Power Associates, L.P. ("LS Power"), New South Energy, LLC ("New South"), Office of Regulatory Staff ("ORS"), South Carolina Electric & Gas ("SCE&G") and the South Carolina Energy Users Committee ("SCEUC").

The direct testimony was filed and accepted into the record in this docket by Janice D. Hager on behalf of Duke; Neville Lorick and Steve Cunningham on behalf of SCE&G; Samuel S. Waters on behalf of Progress; Lawrence J. Willick on behalf of LS Power; and Timothy Eaves and David E. Dismukes on behalf of New South. Rebuttal testimony was filed and accepted into the record by Janice D. Hager on behalf of Duke; Julius A. Wright on behalf of SCE&G; Samuel S. Waters on behalf of Progress; and David Dismukes on behalf of New South.

The Commission held an evidentiary hearing in this matter on October 26, 2005. At the hearing, Progress was represented by Len S. Anthony and Kendal Bowman; Duke was represented by Richard L. Whitt; LS Power was represented by Darra W. Cothran; New South was represented by Frank R. Ellerbe, III; ORS was represented by Florence P. Belser and Shannon Boyer Hudson; and SCE&G was represented by Patricia B. Morrison, Mitchell Willoughby and Belton T. Zeigler. The SCEUC, represented by Scott Elliott, notified the Commission by letter dated October 24, 2005 that they would not appear and participate in the October 26, 2005 hearing. By agreement of the parties, the direct and rebuttal testimony of all witnesses was presented without cross examination by other parties, but with questions from the Commissioners. At the conclusion of the hearing , the Commission set December 5, 2005 as the date for the parties to provide post-hearing briefs. That date was subsequently extended to December 19, 2005 by request of the parties.

II.

SUMMARY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission has carefully reviewed the testimony and evidence presented by all parties in this docket and the arguments presented in the post-hearing briefs. For the reasons set forth below, the Commission enters the following findings of fact and conclusions of law:

1. The Commission finds that issuing rules restricting and formalizing the RFP process could impose burdens on the generation procurement process that would be contrary to the best interest of the consuming public in South Carolina. The danger that new RFP regulations could damage the public interest is particularly great if the regulations followed the approach advanced by the proponents of a rule-making, which would limit the utilities' flexibility to respond to changing needs, conditions and opportunities once an RFP is issued.
2. The Commission finds that base-load resources are rarely the proper subject for structured RFP solicitations and any such solicitation should be at the discretion of the utility in question.
3. The Commission finds that the current practice in South Carolina involves multiple regulatory reviews of generation procurement decisions and is appropriately structured to protect the interests of South Carolina electric customers.
4. The Commission finds that electric utilities in South Carolina in fact use RFPs when appropriate to evaluate market-based options for meeting their future generation needs, as current regulatory law and practice require.
5. The Commission finds that the proponents of new mandatory RFP requirements have not presented evidence sufficient to convince the Commission that consumer interests justify the issuance of new RFP regulations.

6. The Commission finds that the current generation procurement process is working well for the State of South Carolina and for the consuming public as demonstrated by the high reliability and low-cost of electric power in South Carolina relative to other regions of the United States.

III.

EVIDENCE AND ARGUMENTS SUPPORTING THE COMMISSION'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Restricting the RFP Process Could Impose Burdens on the Generation Procurement Process that Would Be Contrary to the Best Interest of the State of South Carolina and the Consuming Public.

Generation procurement decisions are among the most important decisions that electric utilities make. They can affect generation economics for 40 years or more, and generation costs represent more than two-thirds of a customer's electric bill. TR at 100. Issues concerning how and when utilities construct or acquire new supply resources are uniquely the province of state regulators. For example, the Energy Policy Act of 2005 expressly prohibits the Federal Energy Regulatory Commission or any electric reliability organization from ordering construction of new generation resources. 16 U.S.C. § 215(i)(2).

As discussed more fully below, South Carolina's electric utilities currently use RFPs when appropriate in making generation capacity decisions. TR at 36, 52, 70, 101, 148. Under current practice, utilities structure RFPs based on their existing needs and

conditions and evaluate the responses they receive in light of circumstances as they evolve during the procurement process. In selecting generation resources, utilities extensively model and study their available supply options and the factors relevant to them over a 15-20 year planning horizon. TR at 30-34, 120-121. Utilities include market-based options in their modeling and study. Utilities then exercise business judgment to arrive at supply decisions that are in the best interest of their customers based on all options available. The resulting supply decisions are then subject to review in one or more regulatory proceedings, which are discussed in more detail below.

None of the parties proposing new regulations in this proceeding have pointed to any case in which South Carolina utilities acting under the current rules have made bad supply decisions or where the Commission has been called on to reverse supply decisions when presented for approval. None of the parties have pointed to any gap in the Commission's authority to oversee or regulate the current process or to respond to any complaints or concerns that may arise.

Instead, the proponents of new RFP regulations seek to restrict utilities' flexibility and discretion in the interest of a more "transparent" procurement process. The proponents of new RFP regulations argue that except in unusual circumstances utilities should be required to issue a highly structured RFP in all generation procurements. TR. at 261 - 262. Furthermore, when such an RFP is issued, an award should be made based on a "pre-defined scoring sheet that clearly identifies the criteria by which the resource

submissions will be evaluated and the weights of each of the criteria." TR at 241; *See also,* TR at 262. This scorecard would be fixed at the start of the process and would not be allowed to change "without an overwhelming determination that doing so would be in the public interest." TR at 262. The scoring and award would not necessarily be left to the utility issuing the RFP but instead would involve "the use of an independent third-party to design, administer and evaluate the [RFP] process . . . ." TR at 282, *See also*, TR at 299.

The Commission finds that RFP regulations such as these would substantially limit the business judgment required for utilities to make supply decisions in the best interests of customers. Such a rule would fundamentally disrupt a supply procurement process which is working well in South Carolina. TR at 103-104. As discussed below, supply decisions require the exercise of careful business judgment applied across multiple factors. The Commission finds that such judgment should not be replaced by pre-established criteria and pre-weighted scorecards. The Commission further finds that under the present regulatory structure, the Commission and ORS have all the authority needed to ensure that utilities fairly evaluate market opportunities and take advantage of them where appropriate.

1. Criteria Based Selection

As the testimony in this docket indicates, the considerations that govern generation procurement decisions are complex and difficult to quantify. TR at 103-104. According to SCE&G's President Mr. Lorick, these considerations include judgments concerning

> the size of the generation resource to be acquired; the fuel type and generation technology it represents; its location on the transmission grid and ability to support the location-specific needs for things like voltage support; its response time; its anticipated operating and maintenance costs; its location vis-à-vis rail lines or pipelines that will provide fuel transportation; the cost structure and reliability of the rail or pipeline concerned; the resource's present and anticipated future environmental compliance costs; its ability to be retrofitted to meet additional environmental restrictions if imposed; [and] its fuel efficiency.

TR at 100. All these things must be evaluated in a dynamic context in which "these factors and their relative importance change over time." TR at 103. Judgments must be made concerning the extent and nature of likely future changes in "fuel costs, the nature of future environmental regulations, future maintenance expenses, and [the utility's future] load shapes." TR at 103, 104. Where a third party developer is involved, the evaluation must also include an evaluation of the "present and future creditworthiness of the developer, its management and operational culture" and similar considerations. TR at 104.

The Commission agrees with the multiple witnesses who testified that it would be difficult if not impossible to design a fixed criteria-based RFP process that properly incorporates the judgment required in assessing all these parameters. TR at 45-47, 66-67, 103-104. The Commission would note that among the witnesses from SCE&G, Duke and Progress are individuals with extensive, direct experience with utility decision-making

related to generation siting and procurement. They have all testified emphatically that pre-determined, criteria-based RFP selection processes are not effective means for making these critical decisions. TR at 45-47, 67-68, 103-104.

2. Flexibility to Change Criteria or Resource Type

The evidence also shows that it is important for utilities to maintain flexibility during a procurement process so that they can revise their evaluation criteria and self-build options as conditions change. As the key personnel from the utilities testified, planning is not a straight-line process. TR at 32-34, 124. Instead, options evolve as information about fuel costs, technology, environmental policy, load shapes and market dynamics change. TR at 100-101, 124. Utilities design their capacity procurement processes to keep procurement options open as long as possible. TR at 124. They make commitments as late as possible in the decision-making cycle so that these decisions can be made based on the most current information available. *Id.*

To give independent power producers the up-front certainty they desire from a structured RFP process would require utilities to make many important supply decisions years before they would otherwise be made. TR at 124. Except in unusual circumstances, proponents of new regulations want them to freeze utilities into scorecards established at the beginning of the RFP process. TR at 262. Under these proposals, utilities would have to make critical decisions with limited information and would lose the flexibility to respond as needs and conditions change.

On the other hand, SCE&G's witness, Mr. Cunningham, gave a concrete example of the importance to utility customers of the sort of flexibility that a structured RFP process could eliminate. TR at 124-125. In the 1990s, SCE&G's planning process indicated the need for additional peaking capacity starting in 2001. A formal RFP process was utilized to determine whether SCE&G should purchase this capacity and energy to serve the need or self-build peaking capacity. The Company's self-build option was to install two combustion turbines at its Cope plant site and take advantage of existing infrastructure and manpower. When evaluated against the RFP bids, this self-build option was determined to be the most reliable and economic option.

During this same timeframe significant work was being done to determine SCE&G's best strategy for complying with NOx and SOx environmental regulations for its coal units. TR at 125. SCE&G determined that a major capital expenditure for adding selective catalytic reduction to Cope station could be avoided if NOx emissions from Urquhart 1 & 2 were significantly reduced by repowering them with combustion turbines. *Id.* The Urquhart repowering option ultimately proved to be the most beneficial solution for this capacity requirement. *Id.* SCE&G applied for and received siting authorization for this project from the Commission in 2000 and it entered commercial operation in the Summer of 2002. *Id.* Under the structured RFP process proponents of new regulations seek, SCE&G would have found it difficult to set aside the criteria and resource options

identified when the RFP was issued. This could have cost customers millions of dollars over the lives of the assets involved.

The Commission finds that the type of formalized, highly-structured RFP process being proposed here is not likely to lead to the best result for consumers due to the restrictions placed on utilities to respond to changes in market conditions, fuel costs, environmental regulations and other economic and risk factors. The Commission further finds that such an RFP process can severely restrict the exercise of sound business judgment by utilities in ways that will injure the interests of customers long-term. TR at 123-124.

B. An RFP Process Should Not Involve Base-Load Generation Resources.

While it may be appropriate for utilities to consider market alternatives for certain intermediate and peaking resources and short-term capacity needs, the Commission agrees with witnesses for the utilities that base-load resources are rarely the proper subject for structured RFPs, whether mandatory or voluntary and whether employing pre-established evaluation criteria or not. TR at 69, 102, 125-126. As the evidence of record indicates, relying on the market for base-load resources is problematic for several reasons.

Planning Cycle and Operational Considerations –Base-load resources provide the backbone of a utility's system. The availability and reliability of base-load resources is critical to the reliability of a system and they typically have useful lives in excess of 40

years. TR at 100. Where problems arise with either the construction or operation of a base-load unit, it can take 8 years or more to design, site and construct a replacement. TR at 125-126.

The long-lead times involved make it particularly important that utilities retain full control over the procurement and siting of base-load units. Circumstances can be expected to change during the approximately 8-year siting and construction cycle for these plants. As a result, locking utilities into to set criteria or requirements at the outset of the procurement process, as a structured RFP process would do, is particularly dangerous where base-load units are involved. Were an RFP to be issued for base-load, it would need to be issued as much as nine years in advance of commercial operation to allow eight years for siting and construction after a bid was awarded. TR at 126. However, under the self-build context, the utility could cancel or reconfigure the plant at any time before notice to proceed was issued to its construction contractors. In other words, as SCE&G's witness Cunningham testified, under self-build the utility would "have significant flexibility to change design, location, configuration, technology, etc. of the project up to six years before commercial operation," or three years after criteria would have been issued in a structured RFP. *Id.*

Furthermore, utilities must be able to ensure that the base-load plants on which they rely are operated and maintained properly over their very extended useful lives. TR at 105-106. Ownership of these resources is often the only way to ensure that this is

done. All these factors support maximum utility flexibility in selecting base-load resources.

In addition, as the record shows, there are benefits to short-term electric system operations from utilities maintaining direct ownership and control of these critical base-load plants. TR at 115. Utilities have the direct responsibility to electric customers and the regulators for maintaining the reliability of their electric system. The principal obligation of independent power producers is to their lenders and investors. The record shows that utilities do in fact take risks to keep plants on line during voltage swings or generation emergencies that independent power producers would not be likely to take. TR. at 107.

Cost of Service Regulation – For long-lived generation assets with high initial capital costs, keeping them under cost-of-service regulation can mean that customers pay less for service over time. TR at 105. Markets typically price electric capacity based on the current cost of building new capacity. Prices under cost-of-service regulation reflect the plant's original cost, less depreciation. For plants built in the 1950's, 1960's and 1970's, the original cost was far less than today's costs, and depreciation has reduced that cost even lower. *Id.* Had these plants been built under 10 or 20 year contracts, customers would now be paying something much closer to market prices for these plants' output, which would be substantially higher. TR at 105.

As Witness Wright testified, "with cost-based regulation consumers only pay for plant capital costs one time." TR at 153. Under cost-of-service regulation, once customers have paid for a plant's capital cost through depreciation, the utility's capital costs thereafter reflect that this investment has been fully recovered. This is not the case for unregulated generation units. In the long-run, markets set the prices unregulated generators charge and those prices may involve multiple recoveries of the same initial investment.

There are additional operational benefits from a utility owning its base-load resources and a substantial proportion of its other resources as well. One of the reasons utilities have been able to keep older plants on-line and efficiently serving customers is that they had the right, as owners, to make the operational and environmental upgrades needed to keep them current with present requirements. TR at 105-106. For example, as the record shows, SCE&G retrofitted all or part of the Urquhart and Williams Stations plants to use a different fuel than they were constructed to burn. TR at 106. The record also shows that SCE&G has managed the upgrades and schedule of environmental retrofits of its plants as a fleet to minimize the cost of complying with new environmental regulations. *Id.* In addition, SCE&G has identified opportunities, such as the SynFuels tax credits and ash sales, to create value from its generation activities that has been passed on directly to customers. *Id.* It might not have been possible for SCE&G to do these things if it were obtaining base-load generation capacity under a series of contracts

negotiated with third parties under a mandatory RFP process. Further, it is unlikely such adaptations and changes could have been foreseen or incorporated into a contract pursuant to a highly structured RFP process. *Id.*

Building and owning generation plants gives utilities superior ability to adapt to changing conditions in generation markets during the construction and operation of the plants. This adaptability creates value for utility customers and is one reason that regulation should favor utilities keeping base-load resources in the regulated generation portfolio. For the reasons stated above, the Commission finds that base-load units base-load resources are rarely the proper subject for structured RFPs solicitations and any such solicitation should be at the discretion of the utility in question.

C. The Current Structure for Review of Generation Procurement and Capacity Provides the Proper Balance of Regulatory Oversight and Flexibility.

In deciding not to proceed with RFP regulations, the Commission finds that the current system of regulatory oversight for generation procurement decisions is effective and appropriate. The current system properly balances flexibility and judgment for utilities with regulatory review of procurement these decisions by the Commission and the ORS once they are made. Under current law, all generation procurement decisions are subject to intensive regulatory review before the utility may begin construction of a new generating plant, or before it may recover the costs of a new capacity or energy purchase. As the testimony in this docket indicates, this system has worked well and has

produced an electric system serving South Carolina that is characterized by relatively low costs and very high reliability. TR at 145.

All utilities in South Carolina are subject to the broad regulatory authority of the Commission and the ORS which allows the Commission and ORS to investigate any complaint or concern arising out of a utility's regulated activities. S.C. Code Ann. §58-5-210 (1976). TR at 148-149. In furtherance of this general authority, all electric utilities in South Carolina are required to file with the Commission annual Integrated Resource Plans ("IRP Plans"). TR at 149. These plans set forth the utilities' long-term forecasts of loads and resources and designate the types of resources that will need to be procured in the future. These IRP plans are filed with ORS each year for review by electric utility specialists on staff there. IRP plan filings are also publicly noticed and any interested party may request that the Commission open a docket to examine them further.

A further and more focused layer of regulatory oversight involves proceedings under the South Carolina Utility Facility Siting and Environmental Protection Act, S.C. Code Ann. § 58-33-10 et seq. (the "Siting Act"). Before a utility may construct a new generation facility capable of operation at a capacity of more than 75 MW, or a transmission line of greater than 125 kilovolts, it must first file an application for a certificate from the Commission. The Application must contain among other things "a description of the location and of the major utility facility to be built; a summary of any studies which have been made by or for the applicant of the environmental impact of the

facility; a statement explaining the need for the facility; [and] such other information as the applicant may consider relevant or as the Commission may by regulation or order require." S.C. Code Ann. § 58-33-120.

In proceedings under the Siting Act, the Commission as a matter of practice requires utilities to show that they have evaluated all feasible alternatives for meeting the generation requirements that the new plant will serve and that the proposed plant is the option that best serves the needs of utility customers. As part of that showing, the Commission requires utilities to demonstrate that they have fully and fairly considered market-based opportunities to meet the requirements in question. In Siting Act proceedings, ORS has the full authority to investigate the utility's decision-making process, including how the utility determined whether or not market-based resources were appropriate and if so how it solicited bids to determine what opportunities the market offered. In addition, private parties who disagree with the utility's determination of its best alternative for supplying the required capacity have full rights to intervene, to conduct discovery, and to cross-examine utility witnesses concerning how RFPs were conducted.

In short, the Siting Act subjects utilities' construction decisions to detailed review by the Commission, the ORS and private parties. This review takes place in the context of adversarial proceedings with full rights of discovery and cross-examination for all parties.

In addition, before a utility can recover the cost of a new generation plant, or of new generation capacity acquired from the market, it must come before the Commission in a general rate case under S.C. Code Ann. § 58-27-810 *et seq*. In such proceedings, the Commission can and does require the utility to demonstrate the prudence of the generation resources in question. As in Siting Act cases, ORS and private parties have full rights of discovery and cross-examination in general rate cases. General rate cases, thus, provide an additional means for regulatory scrutiny for generation acquisition decisions.

Finally, the Commission conducts annual proceedings under the Fuel Clause Statute, S.C. Code Ann. § 58-27-865, to determine the reasonableness and prudence of the costs that the utilities charge customers for fuel, including costs for energy related to capacity purchases from the market. TR at 102. A utility's decision to purchase energy requirements through an RFP or otherwise is subject to review for prudence in its next annual Fuel Clause proceedings.

In combination, these filings and proceedings—IRP plans, Siting Act proceedings, base rate cases, and Fuel Clause proceedings—provide the opportunity for extensive and detailed public review of utilities' decisions concerning how they meet needs for new generation resources. In all theses proceedings, extensive notice is given to the public, and all interested parties are able to intervene, conduct discovery, and present testimony and arguments before the Commission. Accordingly, while current rules allow the utility

flexibility to make decisions that are in the best interest of its customers, utilities also know that their decisions will be subject to intense regulatory scrutiny before any construction may begin or before any costs may be recovered. The current regulatory structure thereby balances full regulatory accountability with flexibility in a way that allows the best interests of electric customers in South Carolina to be protected at all stages of the generation procurement process.

Furthermore, the current regulatory structure has the clear advantage of placing the responsibility and accountability for procurement decisions squarely on the shoulders of the entities with the greatest knowledge of the system, the clearest stake in the outcome of the decision, and the most direct obligation to customers and regulators. Electric utilities have the legal obligation to serve customers and are accountable for providing reliable and reasonably-priced service to customers. Therefore, it is appropriate for them to bear the discretion and accountability for generation procurement decision, as they do under the present regulatory structure. A restrictive or formalized RFP process presents the clear risk that it can "cloud that accountability" and limit the utilities' "ability to exercise [their] best business judgment." TR at 103.

A restrictive or highly-structured RFP process can also inject the Commission deeply into the generation procurement process, not in the current role of overseeing and reviewing the results of the procurement, but in the very different role of referee in an ongoing process. As former North Carolina Commissioner Wright testified, a highly-

structured RFP process can involve the risk of "taking a business decision made by the utility and turning it into a regulatory process with multiple interested parties and the potential for ongoing litigation ...." TR at 154. Clearly, making the procurement process one governed by extensive regulations creates an invitation for parties to bring complaints and seek to have the rules construed or expanded in a way that would skew the process towards their interests. Moreover, extensive regulations for the RFP process run the risk of shifting the regulatory focus away from the best interest of consumers, which is the sole focus of the present system, to shifting concepts of what is fair to bidders in the RFP process. The regulatory process in South Carolina is intended first and foremost to balance the interest of customers and the utilities.

In short, under the current system, utilities with the obligation to serve are held accountable for providing reliable and reasonably-priced power to customers. They must justify any supply decisions that they make before this Commission, ORS and the public. The current system strikes the proper balance between utility discretion and regulatory oversight.

D. Current Regulatory Law And Practice Require Electric Utilities in South Carolina to Consider Market-Based Options for Supplying Generation Capacity.

Given the high level of regulatory and public scrutiny of resource procurement decisions in South Carolina, it is not surprising that South Carolina utilities in fact use RFPs in gauging market options for new capacity particularly where non-base-load

resources are at issue. Progress's witness Samuel S. Waters testified at the hearing that Progress "intends to issue RFPs for its identified capacity needs, and it would be an exception to not issue one. In fact, PEC [Progress] recently issued an RFP for its identified capacity need in its Western Region ...." TR at 36. Duke's witness Janice Hager testified that "Duke has had good results for our customers as a result of using RFPs for certain types of capacity needs, and we plan to continue using the RFP method where appropriate." TR at 70. SCE&G's President, Neville Lorick, testified that "where it appears that market resources may be able to meet supply needs for its system appropriately, SCE&G polls the market, in some cases informally and in other cases through the issuance of formal RFPs." TR at 101.

The evidence indicates that the State's regulated utilities voluntarily use RFPs in appropriate cases. TR at 148. The ongoing use of RFPs, and the utilities acknowledgement that they intend to use RFPs in the future where non-base load assets are at issue, are evidence that the present regulatory system works effectively and that utilities understand that market resources must be considered fairly when new generation capacity is being procured. Regulations imposing highly structured, criteria-based RFP requirements on South Carolina utilities are not necessary for consumers to get appropriate benefits from market-based generation resources.

E. The Proponents of New RFP Regulations Have Not Presented Evidence Sufficient to Convince the Commission that Consumer Interests Justify New RFP Regulations

The record establishes that South Carolina utilities use RFPs appropriately and effectively and that utility resource procurement decisions are already subject to detailed regulatory and public scrutiny. Accordingly, the operative question is whether the proponents of new RFP regulations have demonstrated a sufficient need for the issuance of regulations that would restrict utility decision-making discretion. In this regard, the Commission finds that the proponents of new RFP regulations have not pointed to any instances where the interests of South Carolina consumers have been injured by a failure to conduct an RFP process, or where utilities have abused their discretion under the current system. Instead, the facts indicate that the existing regulatory structure for utility procurement decisions has worked well in South Carolina, and that the combination of oversight and flexibility involved in the current system has resulted in a highly reliable and low-cost generation system serving the State. TR at 147.

The proponents of RFP regulations instead point to various studies discussing the purported benefits from the growth of wholesale electric markets as a basis for asserting that RFP regulations are warranted here. The Commission finds these arguments unconvincing for several reasons. First, the studies in question do not differentiate between the benefits of wholesale transactions involving traditional generating

companies, like SCE&G, Duke, Progress and Santee-Cooper, and transactions involving independent power producers. TR at 153. Further, it does not differentiate between long-term power purchase agreements and short-term economy transactions. This region has a long history of beneficial wholesale power transactions among the integrated electric utilities, public power companies, and other long-term members of the industry. These markets long predate the advent of independent power producers. Second, these studies do not differentiate between the benefits of wholesale transactions in areas where utility procurement decision have resulted in inefficient and high-cost electric systems (often because of mandatory generation divestiture or purchase of independently generated power at inflated rates) and in areas like South Carolina where regulated, vertically-integrated electric suppliers have served their customers over the years with reliable, low-cost electricity. The impact of independent power is clearly less beneficial in areas where existing utility generators have served their customers well, as is the case in South Carolina.

In addition, the proponents of independent power imply that independent power is somehow responsible for improvements in generation technology that have occurred in recent decades. TR at 162. The Commission finds that assertion to be wholly lacking in credibility. Regulated utilities and independent power producers all have access to the same generation technology which they purchase from the same group of global generation technology companies, such as General Electric Company, Mitsubishi,

Siemens, Toshiba and Alstom. In fact, New South's witness David Dismukes testified that SCE&G's Jasper Plant, which is the most recent generation plant built by a regulated utility in South Carolina, "uses technologies and a project configuration similar to most competitive power developers." TR at 214. Technology improvements are driven by demand from both utility companies and independent power producers.

In short, the proponents of new regulations have not provided any basis for the Commission to determine that the present system for generation procurement is not serving the needs of the electric customers or the public generally in South Carolina. By contrast, the independent power industry has a very checkered history with multiple bankruptcies, business failures and plant cancellations. TR at 157-160. Given the burdens that the RFP proposals would place on the procurement process, the Commission does not find adopting RFP regulations to be in the public interest.

IV.

Summary of Conclusions

Based on the record in this proceeding, the Commission concludes that South Carolina currently has an effective and well developed structure for the regulatory oversight of generation procurements decisions.

Most importantly, the current structure places the decision-making discretion, responsibility and accountability for generation procurement squarely on the entity with

the greatest knowledge of the electric system and customers being served, *i.e.*, the utility. The utility is also the entity with the greatest stake in the outcome of the process.

The current regulatory system provides for public review of generation procurement decisions by this Commission and the ORS through one of several regulatory avenues including Siting Act reviews and base rate cases. The law permits public participation by interested parties in these procurement review proceedings.

This current system has worked well over the years and has helped to create an electric system for South Carolina that is characterized by solid, reliable, low-cost performance. The proponents of new restrictive RFP regulations have not shown any factual basis to conclude that the current system is flawed or functions poorly. To the contrary, the evidence of record shows that South Carolina utilities use RFPs effectively and appropriately when circumstances warrant.

Based on the foregoing, the Commission concludes that the factual or legal justification does not exist to open a rule-making docket to consider the issuance of new regulations concerning generation procurement. The Commission currently has all authority necessary to ensure that when new generation resources are being considered all reasonable options will be fairly evaluated. Further proceedings in this docket and on these issues are not required.

WHEREFORE IT IS ORDERED:

1. That no rule-making be commenced related to a formal Request for Proposal process for utilities that are considering alternatives for adding generating capacity;

2. That no further proceedings are required in this docket.

3. This order will remain in effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST:

G. O'Neal Hamilton, Vice-Chairman

(SEAL)